

1 AN ACT concerning business transactions.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Motor Vehicle Franchise Act is amended by
5 changing Sections 12, 13, 18, and 29 as follows:

6 (815 ILCS 710/12) (from Ch. 121 1/2, par. 762)

7 Sec. 12. Arbitration; administrative proceedings; civil
8 actions; determining good cause.

9 (a) The franchiser and franchisee may agree to submit a
10 dispute involving Section 4, 5, 6, 7, 9, 10.1, or 11
11 ~~cancellation, modification, termination, or refusal to extend~~
12 ~~or renew an existing franchise or selling agreement, or~~
13 ~~refusal to honor succession to ownership or refusal to allow~~
14 ~~a sale or transfer, or the granting of an additional~~
15 ~~franchise of the same line or the relocating of an~~
16 ~~existing motor vehicle dealership within or into a relevant~~
17 ~~market area where the same line make is then represented, or~~
18 ~~the proposed arrangement to establish any additional motor~~
19 ~~vehicle dealership or other facility limited to the sale of~~
20 ~~factory repurchase vehicles or late model vehicles,~~ to
21 arbitration. Any such proceeding shall be conducted under the
22 provisions of the Uniform Arbitration Act by a 3 member panel
23 composed of one member appointed by the franchisee and one
24 member appointed by the franchiser who together shall choose
25 the third member.

26 An arbitration proceeding hereunder for a remedy under
27 paragraph (6) of subsection (d) or paragraph (6), (8), (10)
28 or (11) of subsection (e) of Section 4 of this Act shall be
29 commenced by written notice to the franchiser by the
30 objecting franchisee within 30 days from the date the dealer
31 received notice to cancel, terminate, modify or not extend or

1 renew an existing franchise or selling agreement or refusal
2 to honor succession to ownership or refusal to honor a sale
3 or transfer or to grant or enter into the additional
4 franchise or selling agreement, or to relocate an existing
5 motor vehicle dealer; or within 60 days of the date the
6 franchisee received notice in writing by the franchiser of
7 its determination under any provision of Section 4 (other
8 than paragraph (6) of subsection (d) or paragraph (6), (8),
9 (10) or (11) of subsection (e) of Section 4), 5, 6, 7, 9,
10 10.1, or 11 of this Act; however, if notice of the provision
11 under which the determination has been made is not given by
12 the franchiser, then the proceeding shall be commenced as
13 provided by Section 14 of this Act.

14 The franchiser and the franchisee shall appoint their
15 respective arbitrators and they shall select the third
16 arbitrator within 14 days of receipt of such notice by the
17 franchiser. The arbitrators shall commence hearings within
18 60 days after all the arbitrators have been appointed and a
19 decision shall be rendered within 30 days after completion of
20 the hearing.

21 During the pendency of the arbitration, any party may
22 apply to a court of competent jurisdiction which shall have
23 power to modify or stay the effective date of a proposed
24 additional franchise or selling agreement, or the effective
25 date of a proposed motor vehicle dealership relocation or the
26 effective date of a cancellation, termination or modification
27 or refusal to honor succession or refusal to allow a sale or
28 transfer or extend the expiration date of a franchise or
29 selling agreement pending a final determination of the issues
30 raised in the arbitration hearing upon such terms as the
31 court may determine. Any such modification or stay shall not
32 be effective for more than 60 days unless extended by the
33 court for good cause or unless the arbitration hearing is
34 then in progress.

1 (b) If the franchiser and the franchisee have not agreed
2 to submit a dispute, involving Section 4, 5, 6, 7, 9, 10.1,
3 or 11 of this Act to arbitration under subsection (a), then a
4 proceeding before the Motor Vehicle Review Board as
5 prescribed by subsection (c) or (d) of Section 12 and Section
6 29 of this Act for a remedy other than damages under
7 paragraph (6) of subsection (d) or paragraph (6), (8), (10),
8 or (11) of subsection (e) of Section 4 of this Act shall be
9 commenced upon receipt by the Motor Vehicle Review Board of a
10 timely notice of protest or within 60 days of the date the
11 franchisee received notice in writing by the franchiser of
12 its determination under any provision of those Sections other
13 than paragraph (6) of subsection (d) or paragraph (6), (8),
14 (10), or (11) of subsection (e) of Section 4 of this Act;
15 however, if notice of the provision under which the
16 determination has been made is not given by the franchiser,
17 then the proceeding shall be commenced as provided by Section
18 14 of this Act. cancellation, modification, termination, or
19 refusal to extend or renew an existing franchise or selling
20 agreement or refusal to honor succession to ownership or
21 refusal to allow a sale or transfer or the granting of an
22 additional franchise of the same line make or the relocating
23 of an existing motor vehicle dealership, or the proposed
24 arrangement to establish any additional motor vehicle
25 dealership or other facility limited to the sale of factory
26 repurchase vehicles or late model vehicles, to arbitration
27 under (a), a proceeding for a remedy other than damages shall
28 be commenced upon receipt of a timely notice of protest under
29 paragraph (6) of subsection (d) or paragraph (6), (8), or
30 (10) of subsection (e) of Section 4 of this Act, before the
31 Motor Vehicle Review Board as prescribed by Sections 12 and
32 29 of this Act.

33 During the pendency of a proceeding under this Section, a
34 party may apply to a court of competent jurisdiction that

1 shall have power to modify or stay the effective date of a
2 proposed additional franchise or selling agreement, or the
3 effective date of a proposed motor vehicle dealership
4 relocation, or the effective date of a cancellation,
5 termination, or modification, or extend the expiration date
6 of a franchise or selling agreement or refusal to honor
7 succession to ownership or refusal to approve a sale or
8 transfer pending a final determination of the issues raised
9 in the hearing upon such terms as the court may determine.
10 Any modification or stay shall not be effective for more than
11 60 days unless extended by the court for good cause or unless
12 the hearing is then in progress.

13 (c) In proceedings under (a) or (b), when determining
14 whether good cause has been established for granting such
15 proposed additional franchise or selling agreement, or for
16 relocating an existing motor vehicle dealership, the
17 arbitrators or Board shall consider all relevant
18 circumstances in accordance with subsection (v) of Section 2
19 of this Act, including but not limited to:

20 (1) whether the establishment of such additional
21 franchise or the relocation of such motor vehicle
22 dealership is warranted by economic and marketing
23 conditions including anticipated future changes;

24 (2) the retail sales and service business
25 transacted by the objecting motor vehicle dealer or
26 dealers and other motor vehicle dealers of the same line
27 make with a place of business in the relevant market area
28 to be served by the additional franchise or the relocated
29 motor vehicle dealership during the 5 year period
30 immediately preceding such notice as compared to the
31 business available to them;

32 (3) the investment necessarily made and obligations
33 incurred by the objecting motor vehicle dealer or dealers
34 and other motor vehicle dealers of the same line make

1 with a place of business in the relevant market area to
2 be served by the additional franchise or the relocated
3 motor vehicle dealership to perform their obligations
4 under existing franchises or selling agreements; and, the
5 manufacturer shall give reasonable credit for sales of
6 factory repurchase vehicles purchased by the objecting
7 motor vehicle dealer or dealers and other motor vehicle
8 dealers of the same line make with the place of business
9 in the relevant market area to be served by the
10 additional franchise or the relocated motor vehicle
11 dealership, or the additional motor vehicle dealership or
12 other facility limited to the sale of factory repurchase
13 or late model vehicles, at manufacturer authorized or
14 sponsored auctions in determining performance of
15 obligations under existing franchises or selling
16 agreements relating to total new vehicle sales;

17 (4) the permanency of the investment of the
18 objecting motor vehicle dealer or dealers and other motor
19 vehicle dealers of the same line make with a place of
20 business in the relevant market area to be served by the
21 additional franchise or the relocated motor vehicle
22 dealership;

23 (5) whether it is beneficial or injurious to the
24 public welfare for an additional franchise or relocated
25 motor vehicle dealership to be established;

26 (6) whether the objecting motor vehicle dealer or
27 dealers and other motor vehicle dealers of the same line
28 make with a place of business in the relevant market area
29 to be served by the additional franchisee or relocated
30 motor vehicle dealership are providing adequate
31 competition and convenient consumer care for the motor
32 vehicles of the same line make owned or operated in the
33 area to be served by the additional franchise or
34 relocated motor vehicle dealership;

1 (7) whether the objecting motor vehicle dealer or
2 dealers and other motor vehicle dealers of the same line
3 make with a place of business in the relevant market area
4 to be served by the additional franchisee or the
5 relocated motor vehicle dealership have adequate motor
6 vehicle sales and service facilities, equipment, vehicle
7 parts and qualified personnel to reasonably provide for
8 the needs of the customer; provided, however, that good
9 cause shall not be shown solely by a desire for further
10 market penetration;

11 (8) whether the establishment of an additional
12 franchise or the relocation of a motor vehicle dealership
13 would be in the public interest;

14 (9) whether there has been a material breach by a
15 motor vehicle dealer of the existing franchise agreement
16 which creates a substantially detrimental effect upon the
17 distribution of the franchiser's motor vehicles in the
18 affected motor vehicle dealer's relevant market area or
19 fraudulent claims for warranty work, insolvency or
20 inability to pay debts as they mature;

21 (10) the effect of an additional franchise or
22 relocated motor vehicle dealership upon the existing
23 motor vehicle dealers of the same line make in the
24 relevant market area to be served by the additional
25 franchisee or relocated motor vehicle dealership; and

26 (11) whether the manufacturer has given reasonable
27 credit to the objecting motor vehicle dealer or dealers
28 and other motor vehicle dealers of the same line make
29 with a place of business in the relevant market area to
30 be served by the additional franchise or relocated motor
31 vehicle dealership or additional motor vehicle dealership
32 or other facility limited to the sale of factory
33 repurchase or late model vehicles, for retail sales of
34 factory repurchase vehicles purchased by the motor

1 vehicle dealer or dealers at manufacturer authorized or
2 sponsored auctions.

3 (d) In proceedings under subsection (a) or (b), when
4 determining whether good cause has been established for
5 cancelling, terminating, refusing to extend or renew, or
6 changing or modifying the obligations of the motor vehicle
7 dealer as a condition to offering a renewal, replacement, or
8 succeeding franchise or selling agreement, the arbitrators or
9 Board shall consider all relevant circumstances in accordance
10 with subsection (v) of Section 2 of this Act, including but
11 not limited to:

12 (1) The amount of retail sales transacted by the
13 franchisee during a 5-year period immediately before the
14 date of the notice of proposed action as compared to the
15 business available to the franchisee.

16 (2) The investment necessarily made and obligations
17 incurred by the franchisee to perform its part of the
18 franchise.

19 (3) The permanency of the franchisee's investment.

20 (4) Whether it is injurious to the public interest
21 for the franchise to be cancelled or terminated or not
22 extended or modified, or the business of the franchise
23 disrupted.

24 (5) Whether the franchisee has adequate motor
25 vehicle sales and service facilities, equipment, vehicle
26 parts, and service personnel to reasonably provide for
27 the need of the customers for the same line make of motor
28 vehicles handled by the franchisee.

29 (6) Whether the franchisee fails to fulfill the
30 warranty obligations of the manufacturer required to be
31 performed by the franchisee.

32 (7) The extent and materiality of the franchisee's
33 failure to comply with the terms of the franchise and the
34 reasonableness and fairness of those terms.

1 (8) Whether the owners of the franchise had actual
 2 knowledge of the facts and circumstances upon which
 3 cancellation or termination, failure to extend or renew,
 4 or changing or modification of the obligations of the
 5 franchisee as a condition to offering a renewal,
 6 replacement, or succeeding franchise or selling
 7 agreement.

8 (e) If the franchiser and the franchisee have not agreed
 9 to submit a dispute to arbitration, and the dispute did not
 10 arise under paragraph (6) of subsection (d) or paragraph (6),
 11 (8), ~~or (10), or (11)~~ of subsection (e) of Section 4 of this
 12 Act, then a proceeding for a remedy other than damages may
 13 ~~shall~~ be commenced by the objecting franchisee in the
 14 circuit court of the county in which the objecting franchisee
 15 has its principal place of business, within 60 days of the
 16 date the franchisee received notice in writing by the
 17 franchiser of its determination under any provision of this
 18 Act other than paragraph (6) of subsection (d) or paragraph
 19 (6), (8), (10), or (11) of subsection (e) of Section 4 of
 20 this Act; however, if notice of the provision under which the
 21 determination has been made is not given by the franchiser,
 22 then the proceeding shall be commenced as provided by Section
 23 14 of this Act. the--aforesaid--Sections,--or--as--otherwise
 24 prescribed-by-Section-13-of-this-Act.

25 (f) The changes to this Section made by this amendatory
 26 Act of the 92nd General Assembly (i) apply only to causes of
 27 action accruing on or after its effective date and (ii) are
 28 intended to provide only an additional venue for dispute
 29 resolution without changing any substantive rights under this
 30 Act.

31 (Source: P.A. 89-145, eff. 7-14-95.)

32 (815 ILCS 710/13) (from Ch. 121 1/2, par. 763)
 33 Sec. 13. Damages; equitable relief. Any franchisee or

1 motor vehicle dealer who suffers any loss of money or
2 property, real or personal, as a result of the use or
3 employment by a manufacturer, wholesaler, distributor,
4 distributor branch or division, factory branch or division,
5 wholesale branch or division, or any agent, servant or
6 employee thereof, of an unfair method of competition or an
7 unfair or deceptive act or practice declared unlawful by this
8 Act, or any action in violation of this Act, may bring an
9 action for damages and equitable relief, including injunctive
10 relief, in the circuit court of the county in which the
11 objecting franchisee has its principal place of business or,
12 if the parties have so agreed, in arbitration. If the
13 misconduct is willful or wanton, treble damages may be
14 awarded. ~~Where the misconduct is willful or wanton, the court~~
15 ~~may award treble damages.~~ A motor vehicle dealer, if it has
16 not suffered any loss of money or property, may obtain
17 permanent equitable relief if it can be shown that the unfair
18 act or practice may have the effect of causing such loss of
19 money or property. Where the franchisee or dealer
20 substantially prevails the court or arbitration panel or
21 Motor Vehicle Review Board shall award attorney's fees and
22 assess costs, including expert witness fees and other
23 expenses incurred by the dealer in the litigation, so long as
24 such fees and costs are reasonable, against the opposing
25 party. Moreover, for the purposes of the award of attorney's
26 fees, expert witness fees, and costs whenever the franchisee
27 or dealer is seeking injunctive or other relief, the
28 franchisee or dealer may be considered to have prevailed when
29 a judgment is entered in its favor, when a final
30 administrative decision is entered in its favor and affirmed,
31 if subject to judicial review, when a consent order is
32 entered into, or when the manufacturer, distributor,
33 wholesaler, distributor branch or division, factory branch or
34 division, wholesale branch or division, or any officer, agent

1 or other representative thereof ceases the conduct, act or
2 practice which is alleged to be in violation of any Section
3 of this Act.

4 The changes to this Section made by this amendatory Act
5 of the 92nd General Assembly (i) apply only to causes of
6 action accruing on or after its effective date and (ii) are
7 intended to provide only an additional venue for dispute
8 resolution without changing any substantive rights under this
9 Act.

10 (Source: P.A. 91-485, eff. 1-1-00; 91-533, eff. 8-13-99.)

11 (815 ILCS 710/18)

12 Sec. 18. Board; powers. The Board shall have the
13 following powers:

14 (a) To conduct hearings, by or through its duly
15 authorized administrative hearing officer, on protests filed
16 under Sections 4, 5, 6, 7, 9, 10.1, 11, and 12 of this Act.

17 (b) To make reasonable regulations that are necessary to
18 carry out and effect its official duties and such further
19 rules as necessary relating to the time, place, and manner of
20 conducting hearings as provided for in this Act.

21 (c) To advise the Secretary of State upon appointments.

22 (d) To advise the Secretary of State on legislation
23 proposed to amend this Act or any related Act.

24 The changes to this Section made by this amendatory Act
25 of the 92nd General Assembly (i) apply only to causes of
26 action accruing on or after its effective date and (ii) are
27 intended to provide only an additional venue for dispute
28 resolution without changing any substantive rights under this
29 Act.

30 (Source: P.A. 89-145, eff. 7-14-95; 89-433, eff. 12-15-95.)

31 (815 ILCS 710/29)

32 Sec. 29. Procedures for hearing on protest. Upon

1 receipt of a timely notice of protest filed with the Motor
 2 Vehicle Review Board under ~~paragraph-(6)-of-subsection-(d)-or~~
 3 ~~paragraph--(6),--(8),-or-(10)-of-subsection-(e)-of~~ Section 4,
 4 5, 6, 7, 9, 10.1, 11, or and-Section 12 of this Act, the
 5 Motor Vehicle Review Board shall enter an order fixing a date
 6 (within 60 days of the date of the order), time, the place of
 7 a hearing and send by certified mail, return receipt
 8 requested, a copy of the order to the manufacturer and the
 9 objecting dealer or dealers. Subject to Section 10-20 of the
 10 Illinois Administrative Procedure Act, the Board shall
 11 designate a hearing officer who shall conduct the hearing.
 12 All administrative hearing officers shall be attorneys
 13 licensed to practice law in this State.

14 At the time and place fixed in the Board's order, the
 15 Board or its duly authorized agent, the hearing officer,
 16 shall proceed to hear the protest, and all parties to the
 17 protest shall be afforded an opportunity to present in person
 18 or by counsel, statements, testimony, evidence, and argument
 19 as may be pertinent to the issues. The hearing officer may
 20 continue the hearing date by agreement of the parties, or
 21 upon a finding of good cause, but in no event shall the
 22 hearing be rescheduled more than 90 days after the Board's
 23 initial order.

24 Upon any hearing, the Board or its duly authorized agent,
 25 the hearing officer, may administer oaths to witnesses and
 26 issue subpoenas for the attendance of witnesses or other
 27 persons and the production of relevant documents, records,
 28 and other evidence and may require examination thereon. For
 29 purposes of discovery, the Board or its designated hearing
 30 officer may, if deemed appropriate and proper under the
 31 circumstances, authorize the parties to engage in such
 32 discovery procedures as are provided for in civil actions in
 33 Section 2-1003 of the Code of Civil Procedure. Discovery
 34 shall be completed no later than 15 days prior to

1 commencement of the proceeding or hearing. Enforcement of
2 discovery procedures shall be as provided in the regulations.
3 Subpoenas issued shall be served in the same manner as
4 subpoenas issued out of the circuit courts. The fees of
5 subpoenaed witnesses under this Act for attendance and travel
6 shall be the same as fees of witnesses before the circuit
7 courts of this State, such fees to be paid when the witness
8 is excused from further attendance, provided the witness is
9 subpoenaed at the instance of the Board or an agent
10 authorized by the Board; and payment of fees shall be made
11 and audited in the same manner as other expenses of the
12 Board. Whenever a subpoena is issued at the request of a
13 party to a proceeding, complainant, or respondent, as the
14 case may be, the Board may require that the cost of service
15 of the subpoena and the fee of same shall be borne by the
16 party at whose instance the witness is summoned, and the
17 Board shall have power, in its discretion, to require a
18 deposit to cover the cost of service and witness fees and the
19 payment of the legal witness fee and mileage to the witness
20 served with the subpoena. In any protest before the Board,
21 the Board or its designated hearing officer may order a
22 mandatory settlement conference. The failure of a party to
23 appear, to be prepared, or to have authority to settle the
24 matter may result in any or all of the following:

25 (a) The Board or its designated hearing officer may
26 suspend all proceedings before the Board in the matter until
27 compliance.

28 (b) The Board or its designated hearing officer may
29 dismiss the proceedings or any part thereof before the Board
30 with or without prejudice.

31 (c) The Board or its designated hearing officer may
32 require all of the Board's costs to be paid by the party at
33 fault.

34 Any circuit court of this State, upon application of the

1 Board, or an officer or agent designated by the Board for the
2 purpose of conducting any hearing, may, in its discretion,
3 compel the attendance of witnesses, the production of books,
4 papers, accounts, or documents, and giving of testimony
5 before the Board or before any officer or agent designated
6 for the purpose of conducting the hearing. Failure to obey
7 the order may be punished by the circuit court as contempt.

8 A party may conduct cross-examination required for a full
9 and fair disclosure of the facts. Within 20 days of the date
10 of the hearing, the hearing officer shall issue his or her
11 proposed decision to the Board and shall, by certified mail,
12 return receipt requested, serve the proposed decision upon
13 the parties, with an opportunity afforded to each party to
14 file exceptions and present a brief to the Board within 10
15 days of their receipt of the proposed decision. The proposed
16 decision shall contain a statement of the reasons for the
17 decision and each issue of fact or law necessary to the
18 proposed decision. The Board shall then issue its final
19 order which, if applicable, shall include the award of
20 attorney's fees, expert witness fees, and an assessment of
21 costs, including other expenses incurred in the litigation,
22 if permitted under this Act, so long as such fees and costs
23 are reasonable.

24 In a hearing on a protest filed under paragraph (6) of
25 subsection (d) or paragraph (6), (8), ~~or (10)~~, or (11) of
26 Section 4 or Section 12 of this Act, the manufacturer shall
27 have the burden of proof to establish that there is good
28 cause for the franchiser to: grant or establish an
29 additional franchise or relocate an existing franchise;
30 cancel, terminate, refuse to extend or renew a franchise or
31 selling agreement; or change or modify the obligations of the
32 motor vehicle dealer as a condition to offering a renewal,
33 replacement, or succeeding franchise or selling agreement or
34 refuse to honor succession to ownership or refuse to approve

1 a proposed transfer or sale. The determination whether good
2 cause exists shall be made under Section 12 of this Act.

3 The Board shall record the testimony and preserve a
4 record of all proceedings at the hearing by proper means of
5 recordation. The notice required to be given by the
6 manufacturer and notice of protest by the dealer or other
7 party, the notice of hearing, and all other documents in the
8 nature of pleadings, motions, and rulings, all evidence,
9 offers of proof, objections, and rulings thereon, the
10 transcript of testimony, the report of findings or proposed
11 decision of the hearing officer, and the orders of the Board
12 shall constitute the record of the proceedings. The Board
13 shall furnish a transcript of the record to any person
14 interested in the hearing upon payment of the actual cost
15 thereof.

16 The changes to this Section made by this amendatory Act
17 of the 92nd General Assembly (i) apply only to causes of
18 action accruing on or after its effective date and (ii) are
19 intended to provide only an additional venue for dispute
20 resolution without changing any substantive rights under this
21 Act.

22 (Source: P.A. 91-485, eff. 1-1-00.)